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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,263	01/12/2001	Gholam A. Peyman	41186	9206

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EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/758,263

Applicant(s)

PEYMAN, GHOLAM A.

Examiner

david shay

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on June 29, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 23-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date June 29, 2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon. Bille et al ('586) teach the use of an ultra short pulse laser to create pockets in the cornea. Simon teaches forming an intrastromal pocket and inserting a gel which is allowed to set and can be adjusted. It would have been obvious to the artisan of ordinary skill to employ the laser of Bille et al ('586) to form the pocket in the method of Simon, since this could form the intrastromal pocket much more precisely than the mechanical device of Simon and will not accidentally perforate the lamellae or to employ the implant and implant configuration of Simon in the method of Bille et al, since this can provide myopic and astigmatic correction, as taught by Simon thus producing a method such as claimed.

Claims 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simon in combination with L'Esperance, Jr. ('372). Simon teaches providing a corneal recurvature by inserting a ring shape complaint in a stromal pocket. L'Esperance, Jr. ('372) teaches correcting the curative of an eye by ablating the external surface thereof. It would have been obvious to the artisan of ordinary skill to employ the surface recurvature of L'Esperance, Jr. ('372) since this could be used in place of the adjustment of Simon or to employ the complaint method and configuration of Simon is the method of L'Esperance, Jr. ('372), since this would enable the treatment of myopic astigmatism while removing less tissue, this producing a method such as claimed.

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Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al ('586) in combination with Simon as applied to claims 1-9 above, and further in view of L'Esperance, Jr. ('372). The teachings of L'Esperance, Jr. ('372), and the motivation for combination thereof, are essentially those set forth above. Thus it would have been obvious to the artisan of ordinary skill to combine these old and well known teachings for the reasons its both above and additionally to employ the surface addition in the method of Bille et al ('586) as modified by inserting the implant of Simon, since this would remove a larger volume of tissue per pulse than the surface removal of Bille et al ('586) than providing for a quicker operation, which is desirable official notice of which hereby taken this producing a method such as claimed.

Applicant argues that the applied references do not disclose the formation of a corneal flap, asserting in particular, that "[A] pocket is not a corneal flap." The examiner must disagree, however, as the upper piece of tissue forming the stromal pocket does fall within the term "flap" as used in the claims, although granted the entire pocket does not consist of a flap. The remainder of applicant's arguments are not persuasive in view of the new grounds of rejection.

The terminal disclaimer filed August 8, 2002 is being evaluated.

Any inquiry concerning this communication should be directed to david shay at telephone number (571) 272-4773.



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GROUP 330